

DEC 22 2005

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0851-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 52224/296056	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>12/22/2005 - fax filed to centralized</u>		Application Number 09/575,839	Filed 05/22/2000
Signature <u><i>Janie Wilkins</i></u> Typed or printed name Janie Wilkins		First Named Inventor Matt Ayers	
		Art Unit 2144	Examiner Thanh Nguyen
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u><i>Brenda O. Holmes</i></u> Signature	
<input type="checkbox"/>	applicant/inventor.	Brenda O. Holmes Typed or printed name	
<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	(404) 815-6500 Telephone number	
<input checked="" type="checkbox"/>	attorney or agent of record. 40,339 Registration number	<u><i>12/22/05</i></u> Date	
<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9198 and select option 2.

* Notice of appeal has not received *

DEC 22 2005

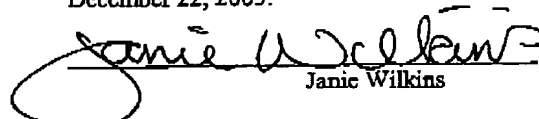
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Matt Ayers ART UNIT: 2144
SERIAL NO.: 09/575,839 EXAMINER: Thanh Nguyen
FILED: 05/22/2000
FOR: Method and System for Directing
Requests for Content to a
Content Server Based on
Network Performance

ATTORNEY DOCKET NO.: 52224/296056
P1088

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF TRANSMITTAL
I hereby certify that this correspondence is being facsimile
transmitted to the U.S. Patent and Trademark Office's
Centralized Facsimile Number of 571.273.8300 on
December 22, 2005.


Janic Wilkins

Pre-Appeal Brief Request for Review

Sir:

Included below is a concise summary of arguments for which this review is requested.

Reasons for Requesting Review

The Examiner's rejections in the most recent Office Action, as well as the earlier rejections in the previous office action, omit essential elements required to establish a prima facie rejection; namely, the Examiner has not provided a reference that teaches or suggests at least the claim limitation of directing a first network client to a content server "based on cost measurements that measure operational characteristics of the network based on communication between a second client that is physically proximate to the first network client" and one of the content servers. In light of this clear factual deficiency in the rejections, a pre-appeal panel review is requested.

12/23/2005 MBINAS 00000030 09575839
02 FC:2401

250.00 OP

Pre-Appeal Brief Request for Review fax-filed 12/22/2005
Serial No. 09/575,839
Page 2 of 4

Remarks

In the Office Action mailed June 30, 2005, the Examiner rejected independent Claims 1, 12, 32, 33, 44, 46 and 64 under 35 U.S.C. § 013(a) as being unpatentable over USPN 6,006,264 to *Colby et al.* ("*Colby*") in view of USPN 6,591,298 to *Spicer et al.* ("*Spicer*").

Claim 1 recites directing a first network client to one of the content servers if cost measurements are available that measure operational characteristics of the network based on communication between the first network client and one or more of the content servers, otherwise directing the first network client to one of the content servers using one or more cost measurements that measure operational characteristics of the network based on communication between a second client that is physically proximate to the first network client and one or more of the content servers. See page 3 of the Response filed November 22, 2004. In rejecting Claim 1, the Examiner alleged that *Colby* describes directing a network client to one of the content servers "based on communication between a client that is physically proximate to the network client" and one or more of the content servers and specifically stated that "Fig. 1 shows directing the network client to content servers." However, in the same paragraph the Examiner admitted that *Colby* does not teach cost measurements that measure operational characteristic of the network or a first and a second network client. See Office Action dated June 30, 2005. These two allegations by the Examiner are inconsistent and thus, cannot form the proper basis for a rejection of the claims.

As explained on page 15 of the Response filed November 22, 2004, neither of the sections of *Colby* relied upon by the Examiner support the Examiner's rejection. The Examiner cited Fig. 1 of *Colby*. Figures 1a, 1b, and 1c illustrate a network that

Pre-Appeal Brief Request for Review fax-filed 12/22/2005**Serial No. 09/575,839****Page 3 of 4**

includes a content-aware flow switch and the accompanying text describes routing between servers or between a client and a server. The Examiner also cited Column 2, lines 47-59 of *Colby*. This section of *Colby* teaches away from the claimed invention. As explained on page 16 of the Response filed May 27, 2005, *Colby* only considers the location of the servers relative to the requesting client. *Colby* does not consider the location of other clients. In contrast to *Colby*, the claimed invention requires directing a first network client to a content server based on information related to a second client that is proximate to the first client.

The Examiner alleged that *Spicer* teaches that "cost measurement are available that measure operational characteristics of the network" and "a first and a second network client." As explained at page 15 of the Response filed November 22, 2004, *Spicer* does not describe using information related to one client to select a content server for another client. *Spicer* is directed to the scheduling of performance measurements. Although *Spicer* describes collecting performance measurements and multiple clients, it does not describe using information about one client to select a content server for another client.

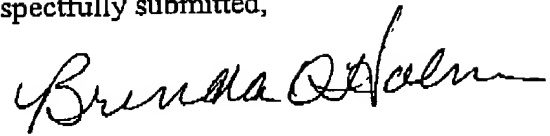
The arguments presented in the Response filed November 22, 2004 and summarized above were reiterated in a telephone interview conducted with the Examiner on January 27, 2005.

No amendments have been made to the claims since the amendments made in the Response dated November 22, 2004 to clarify that a first client is directed to one of the content servers based on cost measurements related to a second client that is proximate to the first client. See Page 3 of the Response dated November 22, 2005.

In light of the above, allowance of the pending claims is respectfully requested.

Pre-Appeal Brief Request for Review fax-filed 12/22/2005
Serial No. 09/575,839
Page 4 of 4

Respectfully submitted,



Brenda O. Holmes
Reg. No. 40,339

Kilpatrick Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
(404) 815-6500
KS File: 52224/296056